

[PUBLIC LAW 901—81ST CONGRESS]

[CHAPTER 1189—2D SESSION]

[H. R. 5487]

AN ACT

To provide for the review of orders of the Federal Communications Commission under the Communications Act of 1934, as amended, and of certain orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended, and of orders of the United States Maritime Commission or the Federal Maritime Board or the Maritime Administration under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. As used in this Act—

(a) "Court of appeals" means a court of appeals of the United States.

(b) "Clerk" means the clerk of the court in which the petition for the review of an order, reviewable under this Act, is filed.

(c) "Petitioner" means the party or parties by whom a petition to review an order, reviewable under this Act, is filed.

(d) When the order sought to be reviewed was entered by the Federal Communications Commission, "agency" means the Commission; when such order was entered by the Secretary of Agriculture, "agency" means the Secretary; when such order was entered by the United States Maritime Commission, or the Federal Maritime Board, or the Maritime Administration, "agency" means that Commission or Board, or Administration, as the case may require.

JURISDICTION

SEC. 2. The court of appeals shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of, all final orders (a) of the Federal Communications Commission made reviewable in accordance with the provisions of section 402 (a) of the Communications Act of 1934, as amended, and (b) of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921, as amended, and under the Perishable Agricultural Commodities Act, 1930, as amended, except orders issued under sections 309 (e) and 317 of the Packers and Stockyards Act and section 7 (a) of the Perishable Agricultural Commodities Act, and (c) such final orders of the United States Maritime Commission or the Federal Maritime Board or the Maritime Administration entered under authority of the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, as are now subject to judicial review pursuant to the provisions of section 31, Shipping Act, 1916, as amended.

Such jurisdiction shall be invoked by the filing of a petition as provided in section 4 hereof.

VENUE

SEC. 3. The venue of any proceeding under this Act shall be in the judicial circuit wherein is the residence of the party or any of the parties filing the petition for review, or wherein such party or any of such parties has its principal office, or in the United States Court of Appeals for the District of Columbia.

REVIEW OF ORDERS

SEC. 4. Any party aggrieved by a final order reviewable under this Act may, within sixty days after entry of such order, file in the court of appeals, wherein the venue as prescribed by section 3 hereof lies, a petition to review such order. Upon the entry of such an order, notice thereof shall be given promptly by the agency by service or publication in accordance with the rules of such agency. The action in court shall be brought against the United States. The petition shall contain a concise statement of (a) the nature of the proceedings as to which review is sought, (b) the facts upon which venue is based, (c) the grounds on which relief is sought, and (d) the relief prayed. The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition upon the agency and upon the Attorney General of the United States by mailing by registered mail, with request for return receipt, a true copy to the agency and a true copy to the Attorney General.

PREHEARING CONFERENCE

SEC. 5. The court of appeals may hold a prehearing conference or direct a judge of such court to hold a prehearing conference.

RECORD TO BE CERTIFIED

SEC. 6. Within the time prescribed by, and in accordance with the requirements of, rules promulgated by the court of appeals in which the proceeding is pending, unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review, duly certified, consisting of the pleadings, evidence, and proceedings before the agency, or such portions thereof as such rules shall require to be included in such record, or such portions thereof as the petitioner and the agency, with the approval of the court of appeals, shall agree upon in writing.

PETITIONS HEARD ON RECORD BEFORE RESPONDENT

SEC. 7. (a) Petitions to review orders reviewable under this Act, unless determined on a motion to dismiss the petition, shall be heard in the court of appeals upon the record of the pleadings, evidence adduced, and proceedings before the agency where the agency has in fact held a hearing whether or not required to do so by law.

PROCEDURE WHERE NO HEARING HELD

(b) Where the agency has held no hearing prior to the taking of the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After

such determination, the court shall (1) where a hearing is required by law, remand the proceedings to the agency for the purpose of holding a hearing; (2) where a hearing is not required by law, pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; and (3) where a hearing is not required by law, and a genuine issue of material fact is presented, transfer the proceedings to a United States district court for the district where the petitioner or any petitioner resides or has its principal office for hearing and determination as if such proceedings were originally initiated in the district court. The procedure in such cases in the United States district courts shall be governed by the Federal Rules of Civil Procedure.

ADDITIONAL EVIDENCE

(c) If a party to a proceeding to review shall apply to the court of appeals, in which the proceeding is pending, for leave to adduce additional evidence and shall show to the satisfaction of such court (1) that such additional evidence is material, and (2) that there were reasonable grounds for failure to adduce such evidence before the agency, such court may order such additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken and may modify or set aside its order and shall file a certified transcript of such additional evidence, such modified findings or new findings, and such modified order or the order setting aside the original order.

REPRESENTATION IN PROCEEDING—INTERVENTION

SEC. 8. The Attorney General shall be responsible for and have charge and control of the interests of the Government in all court proceedings authorized by this Act. The agency, and any party or parties in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review such order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the agency's order, may intervene in any proceeding to review such order. The Attorney General shall not dispose of or discontinue said proceeding to review over the objection of such party or intervenors aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said proceeding unaffected by the action or nonaction of the Attorney General therein.

JURISDICTION OF PROCEEDING

SEC. 9. (a) Upon the filing and service of a petition to review, the court of appeals shall have jurisdiction of the proceeding. The court of appeals in which the record on review is filed, on such filing, shall have jurisdiction to vacate stay orders or interlocutory injunctions theretofore granted by any court, and shall have exclusive jurisdiction to make and enter, upon the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of,

and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

STAY OR SUSPENSION OF ORDERS; INTERLOCUTORY INJUNCTIONS

(b) The filing of the petition to review shall not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. Where the petitioner makes application for an interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this Act, at least five days' notice of the hearing thereon shall be given to the agency and to the Attorney General of the United States. In cases where irreparable damage would otherwise ensue to the petitioner, the court of appeals may, on hearing, after not less than five days' notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than sixty days from the date of such order pending the hearing on the application for such interlocutory injunction, in which case such order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that such irreparable damage would result to petitioner and specifying the nature of such damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, upon a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

The hearing upon such an application for an interlocutory injunction shall be given preference and expedited and shall be heard at the earliest practicable date after the expiration of the notice of hearing on the application provided for above.

Upon the final hearing of any proceeding to review any order under this Act, the same requirements as to precedence and expedition shall apply.

REVIEW IN THE SUPREME COURT ON CERTIORARI OR CERTIFICATION

SEC. 10. An order granting or denying an interlocutory injunction under section 9 (b) of this Act shall be subject to review by the Supreme Court of the United States upon writ of certiorari as provided in title 28, United States Code, section 1254 (1): *Provided*, That application therefor be duly made within forty-five days after the entry of such order. The final judgment of the court of appeals in a proceeding to review under this Act shall be subject to review by the Supreme Court of the United States upon a writ of certiorari in accordance with the provisions of title 28, United States Code, section 1254 (1): *Provided further*, That application therefor be duly made within ninety days after the entry of such judgment. Either the United States or the agency or an aggrieved party may file such petition for a writ of certiorari. The provisions of title 28, United States Code, section 1254 (3), regarding certification, and of title 28, United States Code, section 2101 (e), regarding stays, shall also apply to proceedings under this Act.

RULES

SEC. 11. The several courts of appeals shall adopt and promulgate rules governing the practice and procedure, including prehearing conference procedure, in proceedings to review orders under this Act: *Provided, however,* That such rules shall be approved by the Judicial Conference of the United States.

ENFORCEMENT

SEC. 12. The several United States district courts are hereby vested with jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order heretofore or hereafter issued under section 203 of the Packers and Stockyards Act, 1921 (42 Stat. 161).

REPEALS

SEC. 13. All laws or parts of laws inconsistent with the provisions of this Act are repealed.

EFFECTIVE DATE

SEC. 14. This Act shall take effect on the thirtieth day after the date of its approval. However, actions to enjoin, set aside, or suspend orders of the Federal Communications Commission or the Secretary of Agriculture, or the United States Maritime Commission, the Federal Maritime Board, and the Maritime Administration which are pending when this Act becomes effective, shall not be affected thereby, but shall proceed to final disposition under the existing law.

Approved December 29, 1950.